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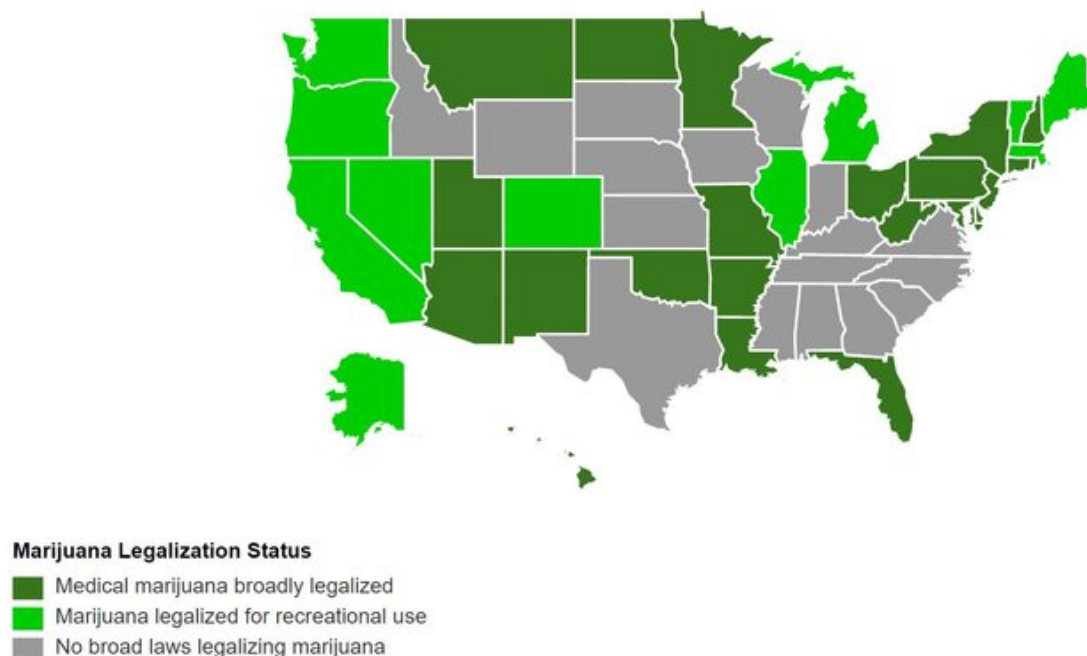
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BY VINCE KLEINDIENST

Since 2012, eleven (11) states, as well as Washington D.C., have legalized recreational marijuana use, while thirty-three (33) have approved marijuana for a wide array of medical uses.[i] Furthermore, in December of 2018, the Agricultural Improvements Act of 2018, or better known as the 2018 Farm Bill, was passed into law.[ii] This bill made hemp federally legal to grow, cultivate, process, and sell. [iii] The 2018 Farm Bill defines hemp as “the plant *Cannabis sativa* L. and any part of that plant, including the seeds thereof and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers . . . with a . . . tetrahydrocannabinol [THC] concentration of not more than 0.3 percent on a dry weight basis.”[iv] The main difference between the federally illegal marijuana and the federally legal hemp is the THC content.[v] THC content is what induces psychotropic or euphoric effects and is the defining factor in determining whether the product is “marijuana” or “hemp”; marijuana contains above 0.3 percent THC while hemp contains less than 0.3 percent THC.[vi]

Although individual state laws allow marijuana growing, selling, cultivating, and processing, and the 2018 Farm Bill allows the same for hemp, federally insured financial institutions have been weary of extending their services to cannabis-related companies in fear that it would open them up to liability for aiding and abetting federally illegal operations.[vii] Despite the federal legalization of hemp and the distinction between marijuana and hemp, these financial institutions continue to deny banking services to those who grow legal hemp, as “[t]hey know they are under intense scrutiny because of marijuana, and think the same level of scrutiny applies [to hemp] or aren’t aware that hemp has been legalized on the federal level.”[viii] Due to this, those engaged in legal businesses, whether it be state legalized marijuana or federally legalized hemp, have great trouble acquiring loans, attaining lines of credit, and banking with institutions (forcing them to deal largely in cash).[ix] These limitations severely hinder the growth and development of an industry that has the potential to shape the future of agriculture.[x]



The resolution to this issue may be just around the corner with the promulgation of the Secure and Fair Enforcement Banking Act.[xi] The House of Representatives passed the bill on Sept. 25th, 2019, and it is now set to receive a vote from the Senate committee.[xii] This SAFE Banking Act would “affirm that banks can lawfully work with the [hemp] industry and wouldn’t be subject to the heightened regulatory scrutiny and compliance necessary to work with the marijuana sector.”[xiii] The Act is designed to “bridge a gap between those [marijuana] companies' legal standing in particular states and the current non-legal status of marijuana sales and usage on a federal level.”[xiv] Further, it would confirm the legality of hemp and hemp-derived products and also affirm the legality of allowing those businesses dealing with these products, or products related to the business, to utilize financial services offered by federally insured institutions without fear of recourse by the federal government.[xv]

The SAFE Banking Act is crucial for the growth of this industry. With the enactment of the 2018 Farm Bill and a majority of the states passing laws that allow either recreational or medical marijuana use, the cannabis, and cannabis-related industry will only continue to grow. However, the barriers to entry in this market are extremely high, absent the ability to attain loans, lines of credit, or even bank at institutions. With these barriers being so high, the potential growth of this extremely profitable industry is severely hindered. Further, those that are already engaged in the industry face great difficulty securing capital to continue their businesses, attracting investors, and are faced with the challenge of keeping large sums of cash on hand while being forced to do business largely in cash.

By passing this Act, the potential for the cannabis industry is arguably unlimited. New research and investment opportunities will flow into the industry, as well as profits, which will ultimately spark even more growth and thus provide new and greater opportunities for those participating in this industry as well as those who wish to enter it.

[i] Alex Graf, *Marijuana Legalization in US: Is End of Cannabis Prohibition in Sight?*, The Globe Post (Sept. 13, 2019), <https://theglobepost.com/2019/09/13/cannabis-legalization/> [<https://perma.cc/3KRJ-PNBT>].

[ii] James Rieger, *INSIGHT: Groundbreaking 2018 Farm Bill Portends Huge Changes to U.S. Cannabis and Hemp Industries*, Bloomberg Law News (Jan. 14, 2019, 9:41 AM), <https://news.bloomberglaw.com/corporate-law/insight-groundbreaking-2018-farm-bill-portends-huge-changes-to-u-s-cannabis-and-hemp-industries> [<https://perma.cc/QSM8-6RKR>].

[iii] *Id.*

[iv] *Id.*; Agricultural Improvements Act of 2018, S. 3042, 115th Cong. §297A (2019) (enacted).

[v] Aaron Cadena, *Hemp vs. Marijuana: The Difference Explained (2019 Update)*, Medium (Sept. 10, 2018), <https://medium.com/cbd-origin/hemp-vs-marijuana-the-difference-explained-a837c51aa8f7> [<https://perma.cc/5GMX-AP2T>].

[vi] *Id.*

[vii] Tucker Herndon & Nicole Keefe, *SAFE Banking Act & NCUA Interim Guidelines: Obstacles to Cannabis Industry Financing*, Burr & Forman (Oct. 8, 2019), <https://www.burr.com/2019/10/08/bloomberg-law-safe-banking-act-ncua-interim-guidelines-obstacles-to-cannabis-industry-financing/> [<https://perma.cc/W8X5-3DTY>].

[viii] Lydia Beyoud, *Pot Banking Bill Offers Hemp Relief and Senate GOP Sweetener (2)*, Bloomberg Law News (Sept. 25, 2019, 6:01 PM) (quoting Jonathan Miller), <https://news.bloomberglaw.com/banking-law/pot-banking-bill-offers-hemp-relief-and-senate-gop-sweetener> [<https://perma.cc/3AVS-5Z9B>].

[ix] Graf, *supra* note i; Herndon & Keefe, *supra* note vii.

[x] Herndon & Keefe, *supra* note vii.

[xi] H.R. 1595, 116th Cong. (2019).

[xii] Beyoud, *supra* note viii.

[xiii] *Id.*

[xiv] Nathan Reiff, *SAFE Banking Act*, Investopedia (Sept. 26, 2019), <https://www.investopedia.com/safe-banking-act-4587773> [<https://perma.cc/VTE6-6VYZ>].

[xv] *Id.*; Lydia Beloud, *Revised Pot Banking Act Would Aid Legal Hemp Industry*, Bloomberg Law News (Sept. 19, 2019, 6:04 PM), <https://news.bloomberglaw.com/banking-law/revised-pot-banking-act-would-aid-legal-hemp-industry> [<https://perma.cc/ZM8J-LB6W>].

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